

CONSTITUTION OF THE REPUBLIC OF MADAGASCAR

Adopted on 19 August 1992, amended in 1995 and 1998

PREAMBLE

The sovereign Malagasy people,

Resolved to promote and develop its heritage of a pluralist society and respectful of the diversity, the richness and the dynamism of its ethical-spiritual and socio-cultural values, among others the “fihavanana” and the beliefs in God the Creator;

Aware, in the name of humanism, of the necessity to reconcile the human being as much with his or her creator, and his or her kin as with nature and the environment, as well as of the exceptional importance of the richness and the plan, animal and mineral resources unique to it, which nature has endowed Madagascar with and that is important to preserve for future generations;

Taking into consideration its geo-political situation in the region and its committed participation among the nations and adopting as its own:

- The International Covenants on Human Rights;
- The African Charter on Human and Peoples’ Rights;
- The conventions concerning the rights of women and of the child;

which are all considered an integral part of its positive law;

Considering that the development of each and everyone’s personality and identity proves to be the operating factor of an integrated, harmonious and durable development of which the required modalities are recognised as being:

- the efficient and equitable management of natural resources for the needs of the development of the human being;
- the fight against injustice, inequality and discrimination in all its forms;
- the separation and the equilibrium of the powers exercised through democratic procedures;
- the founding of a state of law according to which the governing and the governed are subject to the same juridical norms under the supervision of an independent justice;
- the respect and protection of the fundamental freedoms, collective as well as individual;
- the preservation of peace and the practice of solidarity in tangible signs of the national unity in the execution of a policy of development balanced on all grounds;
- the proceedings of transparency in the conduct of public affairs;
- the application of the system of autonomy to assure the effectiveness of decentralisation.

Declares:

TITLE I: GENERAL PRINCIPLES

Article 1

The Malagasy people constitutes a nation organised as a sovereign and secular state, founded on a system of autonomous provinces ... Democracy constitutes the foundation of the Republic ...

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Article 4

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Malagasy is the national language.

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Article 6

The sovereignty belongs to the people, the origin of any power, who exercise it through their representatives elected by direct or indirect universal suffrage or through a referendum. No segment of the people, nor any one individual can attribute to itself the exercise of sovereignty. All nationals of both sexes, enjoying their civil and political rights, are electors under the conditions determined by law.

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Article 7

The law is the expression of the general will. It is the same for all, whomever it protects, whomever it obliges or whomever it punishes.

Article 8

Nationals are equal under the law and enjoy the same fundamental liberties protected by law without discrimination based on sex, level of education, wealth, origin, race, and religious belief or opinion.

TITLE II: FREEDOMS, RIGHTS AND DUTIES OF CITIZENS

SUB-TITLE I: Civil and Political Rights and Duties

Article 9

The exercise and the protection of individual rights and of fundamental freedoms are organised by the law.

Article 10

Freedom of opinion and expression, of communication, of the press, of association, of assembly, of movement, of conscience, and of religion are guaranteed to all and can be limited only with respect to the freedoms and rights of others and by the imperative to safeguard the public order.

Article 11

Every individual has the right to information. Information in all its forms is not subject to any prior constraint. The law and the professional code of ethics determines the conditions of its freedom and its responsibility.

Article 12

Every Malagasy national has the right to leave the national territory and to return under conditions established by the law. Every individual has the right to move and to settle freely in the entire territory of the Republic, with respect for the rights of others and of the prescriptions of the law.

Article 13

Every individual is assured of the inviolability of his person, of his residence and of the secrecy of his correspondence. No search may take place except in accordance with the law and on the written order of a competent judicial authority, except in the case of *flagrante delicto*. No one may be prosecuted, arrested or detained, except in cases determined by law and according to the forms that it has proscribed. No one may be punished except by virtue of a law promulgated and published prior to the commission of the punishable act. No one may be punished twice for the same act. The law assures to all the right to justice, and the insufficiency of resources cannot be an obstacle to it. The state guarantees the fullness and inviolability of rights of defence before all the jurisdictions and at all stages of procedure including the preliminary investigation, at the level of the judicial police or the public prosecutor's office.

Article 14

Citizens organise themselves freely without prior authorisation in associations or political parties; however, associations or political parties which threaten the unity of the nation and those which advocate totalitarianism or segregationism of an ethnic, tribal or confessional character are prohibited. The law determines the conditions of creation and of functioning of the associations and of the political parties.

Article 15

Every citizen has the right, without any discrimination based on membership or not in a political party or on the obligation to be involved with a political party, to be a candidate in the elections specified by this Constitution, under reserve of the conditions established by law.

Article 16

In the exercise of the rights and freedoms recognised by this Constitution, every individual has the duty to respect the Constitution, the institutions, the laws and regulations of the Republic.

SUB-TITLE II: Economic, Social and Cultural Rights and Duties

Article 17

The state organises the exercise of the rights which guarantee to the individual the integrity and dignity of his person, and full physical, intellectual, and moral development.

Article 18

The legal national service is a duty of honour. Its accomplishment does not affect the employment position of a citizen, nor the exercise of his political rights.

Article 19

The state recognises to each individual the right to the protection of his or her health, starting from conception.

Article 20

The family, the natural and fundamental element of the society, is protected by the state. Every individual has the right to start a family and to transmit his personal possessions through inheritance.

Article 21

The state ensures the protection of the family for its free development, as well as that of the mother and of the child through legislation and by the appropriate social institutions.

Article 22

The state strives to take the measures necessary with a view to assure the intellectual development of every individual without other limitations than the aptitudes of each.

Article 23

Every child has the right to instruction and education, under the responsibility of the parents, respecting their freedom of choice. Every adolescent has the right to professional training.

Article 24

The state organises public education, free and accessible to all. Primary education is obligatory for all.

Article 25

The state recognises the right to private education and guarantees the freedom to teach, subject to conditions of hygiene, morality and capacity, established by law. The establishments of private education benefit from the same fiscal regime under conditions established by law.

Article 26

Every individual has the right to participate in the cultural life of the community, in scientific progress and in the benefits which result therefrom. The state assures the promotion and protection of the national and cultural heritage, as well as scientific, artistic and literary production.

Article 27

Work and professional training are the right and duty for every citizen. Access to public institutions is open to every citizen subject only to the conditions of capacity and aptitude. However, recruiting for the public institutions may be affected by quotas by autonomous provinces for a period whose duration and modalities will be determined by law.

Article 28

No one may be discriminated against in his or her work or in his or her employment because of sex, age, religion, opinions, origins, of adherence to a union and political convictions.

Article 29

Every citizen has the right, in accordance with the quality and product of his or her work, to fair remuneration to assure him and his or her family an existence in keeping with human dignity.

Article 30

The state endeavours to provide for the needs of every citizen who, due to age or physical or mental inaptitude, finds himself or herself unable to work, particularly through the institution of bodies of a social nature.

Article 31

The state recognises the right of every worker to defend his interests through union activity and in particular through the freedom to form a union. Membership of a union is voluntary.

Article 32

Every worker has the right to participate, particularly through the intermediary of their representatives, in the determination of work rules and conditions.

Article 33

The right to strike is recognised and exercised under conditions determined by law.

Article 34

The state guarantees the right to individual property; no one can be deprived of it except for reasons of public utility and subject to a just and predetermined compensation.

Article 35

The *Fokonolona* can take appropriate measures to oppose acts capable of destroying their environment, dispossessing them of their land, claiming their spaces traditionally marked for herds of cattle or loss of their ceremonial heritage, provided that these measures do not undermine the general interest or public order. The extent and terms of these provisions shall be determined by law.

Article 36

The contribution of each citizen to government expenditures must be progressive and be calculated on the basis of his or her ability to pay.

Article 37

The state guarantees freedom of enterprise within the limits of respect for the general interest, public order and the environment.

Article 38

The state guarantees security of capital and investments.

Article 39

Everyone has the duty to respect the environment. The state, with the participation of autonomous provinces, assures the protection, the conservation and the improvement of the environment through appropriate means.

Article 40

The state guarantees the political neutrality of the administration, the armed forces, justice, the police, of teaching and education. The state undertakes to institute an independent body directed at the promotion and protection of human rights.

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TITLE III: ORGANISATION OF THE STATE

SUB-TITLE I: The Executive Function

CHAPTER 1: The President of the Republic

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Article 45

The President of the Republic is elected by direct universal suffrage...

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Article 59

When the institutions of the Republic, the independence of the nation, its unity or the integrity of its territory are threatened and when the regular functioning of the public powers is compromised, the President of the Republic may proclaim, on the whole or part of the national territory, a state of emergency, state of national necessity or martial law. The decision is taken by the President of the Republic, in the Council of Ministers, and after consultation with the Presidents of the National Assembly, Senate, and the High Constitutional Court. The proclamation of a state of emergency or a state of national necessity or martial law confers on the President of the Republic the special powers whose extent and duration are specified by an organic law. Upon the proclamation of one of the above situations, the President of the Republic may legislate by way of ordinances for matters that fall within the domain of the law.

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CHAPTER 2: The Government

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Article 64

The Prime Minister presides over the Council of the Government. In the Council of Government:

- he determines the programme of carrying out of the general policy of the state and draws up the measures to be taken to assure its execution;
- he implements the national programmes of economic and social development as well as that of the development of the territory, previously elaborated jointly with the authorities of the autonomous provinces.

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SUB-TITLE II: The Legislative Function

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CHAPTER 3: The Legislative Function and Relations between the Government and Parliament

Article 82.3

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I. The law determines the rules concerning:

- civil rights and fundamental guarantees accorded to individuals and to groups for the exercise of rights and liberties;
- constraints imposed by national defence upon citizens and their possessions;
- the legal scheme of property and real rights and conditions under which property may be made the object of expropriation or requisition due to public necessity or of transfer of property to the state;

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SUB-TITLE III: The Jurisdictional Function

CHAPTER 1: General Principles

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Article 98

The President of the Republic is the guarantor of the independence of Justice. For this purpose, he is assisted by a Superior Council of the Magistrature of which he is the President. The Minister charged with Justice is the vice-president of it.

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Article 99

Magistrates of the bench, judges, and assessors are independent in all their judicial activities and are answerable only to the Constitution and the law. As such, with the exception of cases provided for by law and disciplinary power, they may not be hindered in any way in the exercise of their duties; they may not be called to account for decisions they render or in which they participate.

Article 100

Bench magistrates are irremovable; they occupy the post appropriate to their rank; they may not be reassigned, without their consent, except in case of necessity duly declared by the Superior Council of the Magistracy.

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CHAPTER 2: The Supreme Court

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Article 106

The First President and the Procurator General of the Supreme Court are the heads of this high jurisdiction

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SUB-TITLE IV: The High Constitutional Court

Article 118

In addition to the questions that are referred to it by other articles of the Constitution, the High Constitutional Court, within conditions determined by an organic law:

- decides on the conformity to the Constitution of treaties, laws, ordinances, and inter-provincial Conventions, and the autonomous regulations decreed by the Central Power;
- rules on the conflicts of competence between two or more institutions of the state, and between the state and one or more autonomous provinces or between two or more autonomous provinces;
- decides on the conformity of the Constitution and to the organic laws, of the statutory laws and the laws adopted by the autonomous provinces;
- decides on the contentious matters of the operations of referendum, the election of the President of the Republic and the elections of the Deputies and the Senators.

Article 119

The High Constitutional Court is composed of nine members whose mandate lasts seven years. ...

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Article 121

Before their promulgation, the organic laws and the ordinances are submitted by the President of the Republic to the High Constitutional Court which decides on their constitutionality. A provision ruled unconstitutional by the Constitutional Court may not be promulgated. In this case, the President of the Republic may decide either to promulgate the other provisions of the law or the ordinance, or to submit the whole text for reconsideration by Parliament or of the Council of Ministers, depending on the case, or not to proceed with the promulgation.

Article 122

Ordinances, before their promulgation, and internal regulations of each Assembly, before taking effect, shall be submitted to the Constitutional Court for a ruling on their constitutionality. If, before any court of law, one party raises an objection of unconstitutionality, that court of law stays the ruling and assigns a period of one month to refer the matter to the Constitutional Court, which must rule within a period of one month.

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Article 123

The High Constitutional Court may be consulted by the public powers for an advisory opinion on the constitutionality of any decree.

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TITLE IV: THE AUTONOMOUS PROVINCES

SUB-TITLE I: The Organisation

CHAPTER 1: General Provisions

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Article 127

Except as otherwise provided for in this Constitution, each autonomous province democratically and freely manages its own affairs within the framework of its statutory law, adopted by the Provincial Council and conforming to the rules determined in organic law.

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TITLE V: REVISION OF THE CONSTITUTION

Article 140

The initiative for the revision of the Constitution is vested either with the President of the Republic acting in the Council of Ministers, or with the parliamentary Assemblies voting by a separate vote of the absolute majority of the members composing each Assembly.

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Article 141

A bill or proposal for revision may be adopted only by a three-fourths majority of members of the National Assembly and the Senate.

Article 142

The President of the Republic, acting in the Council of Ministers, may decide to submit a revision of the Constitution to a referendum.

Article 143

The republican form of the state may not be the object of revision.

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